

EXHIBIT J

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A076 575 118 - York, PA

Date: FEB 26 2009

In re: DAMION ANTHONY DERRICK WILKS a.k.a. Damion Rivers

IN BOND PROCEEDINGS

APPEAL


ON BEHALF OF RESPONDENT: Laurence L. Smith, Esquire

ON BEHALF OF DHS: Alice K. Song
Assistant Chief Counsel

The Department of Homeland Security, Immigration and Customs Enforcement ("DHS"), appeals the Immigration Judge's November 13, 2008, custody order granting the respondent's request for a redetermination of the conditions of his custody and ordering that the respondent be released from custody upon posting a bond in the amount of \$5,000. The reasons for the Immigration Judge's custody order are set forth in a decision and order prepared by the Immigration Judge on November 18, 2008. The Immigration Judge's decision is affirmed pursuant to this Board's authority under 8 C.F.R. § 1003.1(e)(5).

While the respondent's criminal record is serious, the United States District Court for the Middle District of Pennsylvania has held that the DHS has the burden of proving that the respondent remains a danger to the community if he is at liberty in the United States pending the completion of his removal proceedings. A reasonable foundation exists in the instant record for the Immigration Judge's determination that the DHS has not met their burden of proof as required by the district court. Accordingly, the appeal of the DHS from the Immigration Judge's November 13, 2008, custody order will be dismissed.

ORDER: The bond appeal is dismissed.



FOR THE BOARD